

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 54 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SETH TECNO CONSULTANTS PVT LTD.

Versus

CADILA HEALTH CARE PVT. LTD.

Appearance:

MR GR MALHOTRA for Petitioner

MR BH CHHATRAPATI for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR

Date of decision: 15/10/1999

ORAL JUDGEMENT

This petition is filed by the petitioner for reliefs prayed for in paragraph 16 of the petition which reads as under:

"16. That in view of the above fact, any other point of law that may be urged during the time of hearing, Your Lordship shall be pleased to issue following directions:

(A) That the Honourable court be pleased to appoint a sole arbitrator of the Honourable court's choice for resolving the disputes of the petitioner (Section 11 of Arbitration and Conciliation Act of 1996);

(B) Such further reliefs which are just and expedient in the nature and circumstances of the case."

The case of the petitioner was that there was an agreement between the parties and as a dispute had arise, it should be it must be referred to arbitration for deciding in accordance with law.

Notice was issued pursuant to which the respondent appeared. It was contended on behalf of the respondent that there was no arbitration clause in the agreement between the parties and the matter cannot be referred to arbitration.

Drawing my attention to provisions of Sections 7 and 11 of the Arbitration and Conciliation Act, 1996, it was contended by the respondent that such prayer can be granted by the court if there is an agreement between the parties. In paras 11, 13 and 15 of the counter affidavit, it was stated that there was no agreement written or oral, to refer the dispute to arbitrator. The application , therefore, deserves to be dismissed.

Mr. Malhotra, in this connection, heavily relied upon clause 3.03 of the agreement. That clause reads:

"3.03 In case the project is abandoned, the consultant shall be compensated as per the stage mentioned above and where definite stage has not reached, it shall be mutually agreed upon."
(emphasis supplied).

In my opinion, it cannot be said that by above clause 3.03, the parties have entered into an agreement to refer the matter or dispute to arbitrator.

In view of the fact that there is no arbitration agreement, the petition is not maintainable and the same deserves to be dismissed and is accordingly dismissed.

It was submitted that the point relates to technical aspect which requires expert opinion. It was, therefore, submitted that a direction may be issued so that the matter can be referred to an expert arbitrator. In my opinion, no such direction can be issued. It is, however, open to the petitioner to request the respondent and it is also open to the respondent to consider the question and to take appropriate decision in accordance with law.

Petition is dismissed. No costs.

(C.K.Thakker, Actg.C.J.)

parekh